

## Corporate Securities Law

August 9, 2016

### OSC Publishes Corporate Finance Branch 2015-2016 Annual Report

The Ontario Securities Commission (OSC) recently published OSC Staff Notice 51-727 *Corporate Finance Branch 2015-2016 Annual Report* (the “**Report**”). The Report offers an updated account of the Corporate Finance Branch’s operational and policy work during fiscal 2016 and seeks to: (i) encourage compliance with regulatory obligations, (ii) improve disclosure in regulatory filings, (iii) provide insights on current trends, (iv) provide guidance on novel issues, and (v) inform market participants about key policy initiatives.

#### Continuous Disclosure Review Program

The Report summarizes the results of the OSC’s Continuous Disclosure Review Program (“**CD Review Program**”) for fiscal 2016. The OSC conducts both full and issue-oriented reviews of issuers’ continuous disclosure and utilizes risk-based criteria to identify issuers with a higher risk of disclosure non-compliance. The Report notes that in fiscal 2016, the OSC identified an “outcome” in 94% of full continuous disclosure reviews and 73% of issue-oriented reviews. Outcomes included prospective disclosure enhancements in future continuous disclosure filings, refiling of disclosure documents, education and awareness and other actions, including enforcement referrals. Prospective changes made up the bulk of the full continuous disclosure review outcomes at 57% (28% for issue-oriented reviews), while refilings accounted for 21% of the continuous disclosure review outcomes (36% for issue-oriented reviews).

Areas of focus for the 2016 CD Review Program included management’s discussion & analysis, the presentation and use of non-GAAP financial measures, and the disclosure of risks and assumptions related to forward-looking information. Of note, the Report states that the OSC intends to closely monitor the use of non-GAAP financial measures over the next year due to concerns with the prominence being given to non-GAAP measures in comparison to GAAP measures as well as the large differences sometimes reported between GAAP and non-GAAP measures.

#### Public Offering Reviews

In fiscal 2016, the OSC reviewed over 300 prospectuses and rights offering circulars, 18% of which related to offerings in the oil & gas industry, followed by the mining sector and the financial services sector (both at 15%). The Report highlights several areas in which the OSC regularly finds deficiencies in prospectus disclosure including (i) description of business and regulatory environment, (ii) risk factors relating to the business and/or offering, (iii) MD&A disclosure in a long form prospectus, and (iv) use of proceeds. The Report also provides guidance on some common issues that arise during prospectus offerings including financial statement disclosure and the application of the significance tests for acquisitions.

The Report concludes with a summary of current initiatives and issues relating to exemptive relief applications, insider reporting and exempt market regulatory reform. A new Exempt Market page has been created on the OSC’s website to serve as an additional resource for this evolving area.

For further information on the Corporate Finance Branch 2015-2016 Annual Report, please consult OSC Staff Notice 51-727 or contact any member of our Corporate Securities Group.